

APPEAL NO. 022372
FILED NOVEMBER 4, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on August 19, 2002. The hearing officer determined that the appellant (claimant) did not sustain an injury in the course and scope of her employment or have disability therefrom. He further found that the respondent (self-insured) timely disputed compensability because it filed a Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21) within 60 days after receiving written notice of injury. The claimant appeals all these determinations; the self-insured responds that the decision should be affirmed.

DECISION

Reversed and rendered on waiver and compensable injury. Affirmed on disability issue.

The dispositive issue in this case is that of waiver by the self-insured of the right to dispute compensability. It is undisputed that the self-insured did not initiate benefits, inform the Texas Workers' Compensation Commission (Commission) or the claimant of its intent to initiate benefits, or file a dispute within seven days after receiving written notice of injury. As the finally decided case of Continental Casualty Company v. Downs, 81 S.W.3d 803 (Tex. 2002) makes clear, the self-insured lost its right to dispute the compensability of the injury. We note that the finding that the self-insured received written notice "on or after January 4, 2002," would not be a helpful finding in light of the confirmed seven-day deadline. However, the record in this case indicates that the self-insured received written notice on January 8, 2002 (the date identified on its TWCC-21), or January 10, 2002 (the date the self-insured stamped as received the Employer's First Report of Injury or Illness (TWCC-1)). It did not file its dispute with the Commission UNTIL January 22, 2002.

Because the matters on which the self-insured disputed compensability have been waived, issue was not joined on whether the claimant had an injury in the course and scope of her employment. As a matter of law, the claimant has sustained a compensable injury. Consequently, we reverse and render a decision finding that the self-insured waived the right to dispute the compensability of the claimant's injury and she therefore sustained a compensable injury on December 20, 2001.

However, the hearing officer found that any inability to work was not brought about by this asserted injury. He has set out in his discussion the factors he considered in this evaluation of the evidence; his conclusions and inferences are supported. An appeals-level body is not a fact finder, and does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Insurance Company of

Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied); American Motorists Insurance Co. v. Volentine, 867 S.W.2d 170 (Tex. App.-Beaumont 1993, no writ). On the matter of disability, we affirm the decision and order. The self-insured is otherwise ordered to pay applicable benefits in accordance with this decision.

The true corporate name of the insurance carrier/self-insured is **(SELF-INSURED)** and the name and address of its registered agent for service of process is

**SUPERINTENDENT
(ADDRESS)
(CITY), TEXAS (ZIP CODE).**

Susan M. Kelley
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Veronica Lopez
Appeals Judge